

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE OF PAGES
1 12. AMENDMENT/MODIFICATION NO.
A0733. EFFECTIVE DATE
See Block 16C

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (if applicable)

6. ISSUED BY
U.S. Department of Energy
Office of Civilian Radio Active Waste Management
P.O. Box 364629
Las Vegas, NV 89036-8629
CODE7. ADMINISTERED BY (if other than Item 6) CODE
U.S. Department of Energy
Office of Civilian Radio Active Waste
Management
P.O. Box 364629
Las Vegas, NV 89036-8629

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

Bechtel SAIC Company, LLC
1180 Town Center Drive
Las Vegas, NV 89144

(%)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.
X DE-AC28-01RW12101

10B. DATED (SEE ITEM 13)

11/14/00

CODE

FACILITY CODE

EXECUTED
COPY

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required):

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- (%) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
DEAR 970.5243-1 "Changes" and Mutual Agreement of the Parties
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, X is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to incorporate the changes from the recent contract renegotiations, which resulted in a revised estimated contract cost, and revised Performance Based Incentives and associated fees. Section B of the contract is replaced in its entirety and is attached.

Except as provided herein, all terms and conditions of the document referenced in Item 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)
John T. Mitchell, Jr.
President and General Manager

16. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Birdie Hamilton-Ray
Contracting Officer

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

18 Apr 05 / 2005

16B. UNITED STATES OF AMERICA

BY

(Signature of Contracting Officer)

16C. DATE SIGNED

4/15/05

(Signature of person authorized to sign)

NSN 7540-01-152-807030-105
PREVIOUS EDITION UNUSABLE
SF FORM 30STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

PART I - THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

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PART I - SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

B.1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this contract, provide the personnel, materials, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and cost-effective manner all necessary related services to manage the programs and operate the facilities as described in the Statement of Work in Section C in this Contract.

B.2 OBLIGATION OF FUNDS

The total amount of funds obligated under this contract, in accordance with Section I, Contract Clause DEAR 970.5232-4, entitled, "Obligation of Funds," is \$1,287,920,657.49.

B.3 ESTIMATED COST AND FEE

a. Estimated Cost for Transition Period and Phase-in Period

- (1) The transition period (effective date of award to February 11, 2001) will be on a cost reimbursement basis and the estimated cost is \$9,579,862. There will be no fee paid for the transition period.
- (2) The phase-in period (February 12 to March 31, 2001) will be on a cost reimbursement basis and the estimated cost is \$23,154,000. There will be no fee paid for the phase-in period.

b. Estimated Contract Value

- (1) The following is the estimated contract cost for the following four fiscal years based upon the annual appropriation and out year funding requirements identified in the Civilian Radioactive Waste Management Program Plan, Revision 3, and the Total System Life Cycle Costs.

FY 01	\$ 156,483K
FY 02	246,170K
FY 03	366,879K
FY 04	367,478K

- (2) The following is the estimated contract cost for the last one and one-half year period of the contract based upon the outyear funding defined in the FY 2005 Congressional Budget Request for the Civilian Radioactive Waste Management program.

FY 05	\$ 335,506K
FY 06 (6 months)	162,148K

- (3) The total estimated contract cost for the initial five-year period of the contract is \$1,634,665,000 plus a fee of \$120,147,878 for a total estimated contract value of \$1,754,812,878.

c. Maximum Total Available Fee and Fee Allocation

The fee available for the performance period 04/01/01 to 3/31/06 shall be associated with Performance Based Incentives (PBI) and the Award Fee Incentive with the following measures, amounts, adjustments, and structure.

- (1) The specific scope, measures, assumptions and conditions for achieving PBI completion are set forth in the following paragraphs. The description of the Award Fee Incentive is set forth in the following paragraphs with the details contained in the Performance Evaluation and Measurements Plan (PEMP). See Part II – Contract Clauses, Section I, Clause I.32, DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount (Dec 2000) Alternates II & III (Dec 2000).
- (2) The maximum fee available for PBIs and Award Fee Incentive for the performance period 04/01/01 to 03/31/06 shall be \$120,147,878.
- (3) PBIs and the Award Fee Incentive must be achieved within the cost and funding profile set forth in paragraph B.3 (b) above unless the profile is modified pursuant to (c)(6), (c)(7) or (c)(8).
- (4) Fee during the initial performance period 04/01/01 to 09/30/03, earned/lost, provisional, and non recoverable, was \$48,297,682.
- (5) There was no fee available for the period 10/01/03 through 03/31/04.

- (6) For the period 04/01/04 to 03/31/05, \$10,618,728 has been available for fee.
- (7) The amount of fee which is available for the final performance period from 04/01/05 through 03/31/06 is the maximum available fee (\$120,147,878) minus the fee during the previous performance period, 04/01/01 to 03/31/05 which was earned/lost, provisional, and non recoverable (a total of \$58,916,410), for a balance of \$61,231,468.
- (8) The PBIs and Award Fee Incentive for the final performance period are set forth below with the distribution of the balance of the available fee:

	<u>PBI</u>	<u>Completion Date</u>	<u>Fee Amount</u>
1.	Complete Improvements and Refinements in the Technical Bases that Support the TSPA-LA	Aug 19, 2005	\$ 11,480,900
2.	Complete Preclosure Documentation	Aug 8, 2005	\$ 11,480,900
3.	Preparation and Delivery of License Application Supporting Documents to DOE	Sept 26, 2005	\$ 16,073,260
4.	Safely Manage, Operate, and Maintain the Yucca Mountain Site	Mar 16, 2006	\$ 6,888,540
The proposed award fee measure is: Program Management and Quality Attributes of a Worldclass Regulated Entity		Apr 2005 to Mar 2006	\$ 15,307,868

The following describes the PBIs and the Award Fee Incentive:

- PBI 1: Complete Improvements and Refinements in the Technical Bases that Support the TSPA-LA: The contractor will complete three sets of analyses to reduce conservatisms in the TSPA-LA: Waste Package Kinematic Calculation, Neptunium Solubility Modeling, and Deliquescence. The contractor will complete the compliance runs for TSPA-LA.

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Attachment

Performance Measure: The contractor must deliver to OCRWM the documents specified below by the dates specified below. When delivered, each document must meet all acceptance criteria as defined in deliverable definition sheets and be delivered and reviewed per AP-7.5Q.

- | | |
|--|-----------------|
| 1) Mechanical Assessment of the Waste Package Subject to Vibratory Ground Motion (CAL-WIS-AC-000001) | August 25, 2005 |
| 2) Dissolved Concentration Limits of Radioactive Elements (ANL-WIS-MD-000010)" | May 31, 2005 |
| 3) Engineered Barrier System Features, Events, and Processes (ANL-WIS-PA-000002) | July 21, 2005 |
| 4) Engineered Barrier System: Physical and Chemical Environment (ANL-EBS-MD-000033) | July 15, 2005 |
| 5) FEPs Screening of Processes and Issues in Drip Shield and Waste Package Degradation (ANL-EBS-PA-000002) | June 23, 2005 |
| 6) Screening Evaluation for Dust Deliquescence and Localized Corrosion (ANL-EBS-MD-000074) | June 29, 2005 |
| 7) Completion of TSPA-LA compliance runs | June 30, 2005 * |

* Or otherwise specified by the HCA or the CO to accommodate changes in program direction

Fee Measure: \$11,480,900 can be earned for this PBI. This equates to \$1,377,708 each for documents 1 through 6 and \$3,214,652 for document 7 above if the documents are delivered by the above dates and are "Accepted Deliverables" under AP-7.5Q. Any fee earned will be paid upon completion and final acceptance of all documents specified above per AP-7.5Q.

For documents that are not deemed to be "Accepted Deliverables" under AP-7.5Q when first delivered, the contractor may still earn \$1,377,708 [100% of available fee] for each document in 1 through 6; and \$3,214,652 [100% of available fee] for 7 above if: 1) the document is resubmitted as a draft within 5 working days of receipt of the DOE Acceptance Review identifying the conditions and instructions for resubmittal, and 2) that draft meets the conditions and instructions for resubmittal. This amount will not be earned until the document is an "Accepted Deliverable" per AP-7.5Q.

For documents delivered or completed late, there will be a per working day fee reduction of 2% of fee allocated to that specific document. The DOE review time and the contractor's first five working days after receipt of the DOE Acceptance Review will not be included in calculating the delay. If a document is over 20 working days late no fee will be earned for that document.

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Attachment

Cost Constraints: The estimated cost of this PBI is \$663,253,131 for the base contract period 4/1/01 – 3/31/06. The estimated cost for the period 10/1/04 – 3/31/06 is \$127,072,000. If the contractor exceeds the estimated cost of this PBI covering the period 10/1/04 – 3/31/06 by more than 10%, without the prior approval of DOE, the fee will be reduced dollar for dollar until it reaches \$0 of fee for this PBI.

- **PBI 2: Complete Preclosure Documentation:** The contractor will complete the Preclosure documentation; including the LA tasks outlined in Contracting Officer Authorization Letter (CO Letter) number 05-001 dated October 29, 2004, on schedule to support the enhancement of the License Application.

Performance Measure: When delivered, each document must meet all acceptance criteria defined in deliverable definition sheets.

The Nuclear Safety Design Basis Report (NSDB) will be reviewed under AP-7.5Q for acceptance. Acceptability of the Design Development Plans (DDPs), Facility Description Documents (FDDs), and System Description Documents (SDDs) will be based on an AP-7.5Q review of a representative sample of documents from the completed DDPs, FDDs, and SDDs submitted as deliverables by the due dates within the table below.

No.	Categories	Available Fee	Delivery Dates
1	Nuclear Safety Design Basis Report (NSDB)	\$4,018,315	8/8/05
2	Design Development Plans (DDPs)	\$2,870,225	6/13/05
3	Facility Description Documents (FDDs)	\$2,296,180	7/19/05
4	System Description Documents (SDDs)	\$2,296,180	7/19/05

If “fuel in air” technical work requires a change to these dates, the CO or Head of Contracting Activity will specify the new delivery dates.

Fee Measure: \$11,480,900 will be awarded if documents are (1) delivered by the delivery dates in the above chart; and (2) are accepted without condition. Any fee earned will be paid for each category upon delivery and acceptance of all documents within that category as reflected in the above chart.

Even if the NSDB and the documents selected as a representative sample from each of the other three categories are not deemed to be “Accepted Deliverables” under AP-7.5Q when first delivered, the contractor may still earn 100% of available fee for each category if: 1) each document in that category is resubmitted as a draft within 5 working days of receipt of the DOE Acceptance Review identifying the conditions and instructions for

resubmittal, and 2) each draft meets the conditions and instructions for resubmittal. This amount will not be earned until all of selected documents become "Accepted Deliverables" per AP-7.5Q.

For documents delivered later than the dates in the above chart, returned as incomplete, or completed late, there will be a fee reduction of 0.5% per document in each category of total available fee per working day late. The DOE review time and the contractor's first five working days after receipt of the DOE Acceptance Review will not be included in calculating the delay. Any document over 20 working days late will result in no fee earned for that category.

Cost Constraints: The estimated cost of this PBI is \$389,674,439 for the base contract period 4/1/01 – 3/31/06. The estimated cost for the period 10/1/04 – 3/31/06 is \$138,909,000. If the contractor exceeds the estimated cost of this PBI covering the period 10/1/04 – 3/31/06 by more than 10% without the prior approval of DOE, the fee will be reduced dollar for dollar until it reaches \$0 of fee for this PBI.

- PBI 3: Preparation and Delivery of the License Application (LA) and Supporting Documents to DOE: It is critical to the success of the Yucca Mountain Project that all updates to the version of the LA delivered to DOE in November 2004, particularly those updates to Safety Analysis Report (SAR) sections 1 and 2, be completed in time for the Integrated Review as specified in the "Management Plan for Development of the Yucca Mountain License Application" (YMP/04-1 Rev 2 or subsequent revisions) (LA Management Plan). Key deliverables in PBIs 1 and 2 are integral to these updates. In addition, all supporting documents must be complete prior to submission of the LA to DOE HQ as defined by the LA Management Plan; except for the TSPA-LA as described below.

Performance Measure: The contractor must resolve all comments received during the review processes that occurred through paragraph 4.3.11 in the LA Management Plan to the satisfaction of the DOE, as evidenced by the sufficiency statements.

- 1) Supporting documents for the LA (defined as references or sources cited directly in the LA in the form of Analysis and Model Reports, Engineering Calculations, Drawings, Specifications, or Sketches) that were generated by BSC, its subcontractors, or the Laboratories are complete by August 31, 2005, with the exception of the "Total System Performance Assessment Model/Analysis for the License Application" (MDL-WIS-PA-000004 Rev 002) discussed in paragraph 3. Complete is defined as the document is submitted to DOE for public release review and no required changes have been identified for the document that will affect the output or technical conclusions supporting the LA.

- 2) The contractor will incorporate changes resulting from those reviews that occurred through paragraph 4.3.11 in the LA Management Plan into the Headquarters Review copy of the LA by September 19, 2005.
- 3) "Total System Performance Assessment Model/Analysis for the License Application" (MDL-WIS-PA-000004 Rev 002) is complete by September 26, 2005. Complete is defined as the document submitted to DOE for public release review, and no required modifications have been identified for the document that will change the output or technical conclusions supporting the LA.

The HCA or the CO may specify new dates to accommodate changes in program direction.

Fee Measure: \$16,073,260 will be awarded if supporting documents are complete, LA is completed, and the TSPA is delivered, as specified above. Any fee earned will be paid upon completion of all work addressed in the PBI. Fee will be reduced 0.5% per working day if supporting documents are not complete as defined in 1 and 3 above, up to 100% of available fee. Delays in delivery of the Draft LA, as described in 2 above, that are attributable to the contractor may reduce available fee at a rate of 4% per day of delay up to 25 working days for a total of 100% of available fee.

The provisional payment of \$9,725,640 will be considered earned when this PBI is accepted. If 100% of available fee is lost, the provisional fee will be lost.

Cost Constraints: The estimated cost of this PBI is \$234,439,576 for the base contract period 4/1/01 – 3/31/06. The estimated cost for the period 10/1/04 – 3/31/06 is \$61,673,000. If the contractor exceeds the estimated cost of this PBI covering the period 10/1/04 – 3/31/06 by more than 10% without the prior approval of DOE, the fee will be reduced dollar for dollar until it reaches \$0 of fee for this PBI.

- PBI 4: Safely Manage, Operate, and Maintain the Yucca Mountain Site: The contractor will manage and operate the Yucca Mountain Site to allow routine and safe access to site work areas. DOE will use the key elements cited below as an indicator of the Site's overall condition. Safe and efficient management of the ESF will ensure that ESF systems are maintained and operated in a manner that ensures personnel safety while meeting a mission of safe and reliable operations supporting testing and tours.

Performance Measure: The specified ESF systems and operation activities must be managed to meet the following schedule commitments:

Site Operations Milestone Indicators	Due Date	Available Fee
FIRE SAFETY: (1) Complete design and award procurement for fire detection system that meets the requirements of NFPA 502 and approved equivalencies (2) Complete design and award procurement for fire alarm system that meets the requirements of NFPA 502 and approved equivalencies; (3) Submit for AHJ approval an equivalency plan for NFPA 502/122 subsurface fire suppression system; (4) Submit a detailed resource loaded schedule for the completion of the fire hazard analysis corrective actions as coordinated with underground lighting work, schedule to include sufficient detail to measure progress at all locations. (5) Complete installation and activation of a fire detection and alarm system from the North Portal to the wye Specifications: NFPA 502/122 and approved equivalencies	(1) 1-Jun-05 (2) 1-Jul-05 (3) 1-Jun-05 (4) 1-Aug-05 (5) 16-Mar-06	\$1,377,708 \$688,854
POWER: (1) Complete and close PMG and Bechtel SE power report findings (CR 3040, 3039, 3308 & 3310) Specifications: 29 CFR 1926 and NEC 1996	8-Sep-05	\$619,969
VENTILATION: (1) Complete ventilation system installation of pressure release valves in the ECRB (Fans A, B, & C); (2) Install fan 10 soft start controller modification; (3) Complete installation of amperage monitoring for fans A, B, & C; (4) Complete installation of vibration monitoring for fans 2, 3, 10, & 11. Specifications: 29 CFR 1926 and NEC 1996	1-Sep-05	\$206,656
COMMUNICATIONS: Complete installation of the Gai-tronics communication system to identified surface facilities (Operations, DOE, SGB, and CH) Specifications: 29 CFR 1926 and NEC 1996	8-Sep-05	\$206,656
RAIL STUDIES: (1) Conduct nondestructive examination of ESF rail to assess rail condition and provide prioritized recommendations for corrective actions, if any, based on this examination; (2) Conduct engineering evaluation of rail system including alternatives supporting reliable operation at a 25 mph speed and under muck haulage axle loads. Specifications adapted from American Railroad Association Specifications	15-Mar-06	\$137,771

Site Operations Milestone Indicators	Due Date	Available Fee
RAIL: (1) Institute a rail and rolling stock inspection program; (2) Complete initial maintenance on surface and underground rail system; (3) Correct rail major issues including the ECRB switch and surface switch; (4) Complete procurement of a rail car with crane to perform rail maintenance Specifications adapted from American Railroad Association Specifications	13-Feb-06	\$964,396
ROCKBOLTS: Resolve the Non-Conformance Report on rockbolts by completion of grouting or replacement of noncompliant Williams rockbolts Specifications: ASTM specifications from the manufacturer and 29 CFR 1926	1-Aug-05	\$826,625
CONVEYOR: (1) Complete removal of the surface conveyor system; (2) Complete removal of conveyor belt within the ECRB.	(1) 12-Jan-06 (2) 16-Mar-06	\$826,625
CI-36: Complete the 3 phases of the Chlorine 36 sample excavation while minimizing airborne dust ensuring that site workers are not exposed to dust in excess of the action level (50% of the threshold limit value for an eight hour period) TCO requirements specify performance and OSHA 1926	16-Aug-05	\$895,510
ROADS: Initiate prioritized actions for ESF access road maintenance and repair as identified in the 3/3/05 Independent Evaluation of Area 25 Access Roads (1) Complete road shoulder repair and maintenance from the ESF to the Lathrop Wells road intersection; (2) Develop a multiyear plan in response to the Road Evaluation in sufficient detail to support multiyear planning.	(1) 29-Sep-05 (2) 31-Aug-05	\$137,771

Fee Measure: \$6,888,540 will be earned when the contractor completes all activities by the dates indicated above including all of their individual components. Activities completed late will result in a reduction of fee at 25% per activity for each work week late up to a total aggregate of 4 weeks late after which the contractor may be subject to no fee for that activity and the available fee apportioned to that activity will be lost. Any fee earned will be paid at the end of the performance period for those activities that have been completed according to the percentages identified in the table. Because fee may still be earned for those activities due in March 2006 after the performance period, if completed within 4 weeks of the due date, fee earned for those activities will be paid at the end of the performance period or when the activities are completed, whichever is later. DOE will physically verify each action after the contractor declares the activity is complete.

Cost Constraints: The estimated cost of this PBI is \$213,994,698 for the base contract period 4/1/01 – 3/31/06. The estimated cost for the period 10/1/04 – 3/31/06 is \$48,704,000. If the contractor exceeds the estimated cost of this PBI covering the period 10/1/04 – 3/31/06 by more than 10% without the prior approval of DOE, the fee will be reduced dollar for dollar until it reaches \$0 of fee for this PBI.

Award Fee Incentive - Program Management of Worldclass Quality for a Regulated Entity: Award fee may be earned for the activity throughout the remainder of the contract base period beginning in April 2004. Fee for this incentive would be measured semi-annually. The total award fee available will be equally split among the four six-month time periods between April 1, 2004 and March 31, 2006. This activity focuses contractor efforts on the following programmatic and management attributes: supporting DOE as the owner/licensee and performing as a world class nuclear facility operator; responsiveness to DOE direction during the licensing development and proceedings (examples of this include developing timely responses to comments, information addressing licensing contentions, and provision of expert witnesses and assistance during all phases of the licensing process); provides inputs to the Licensing Support Network and Safety Conscious Work Environment initiatives, streamlining business practices and promoting efficiency in management processes, promoting professionalism of management and staff, enhancing Environment, Safety and Health programs and processes to prevent accidents/injuries or regulatory compliance issues, and pursuing means to reduce cost, gain efficiency, and improve schedule for repository design and infrastructure readiness (preconstruction) activities.

Award Fee Measurement: This measure of the contractor's support for expectations, including but not limited to, the following: Implementation of a culture of a worldclass nuclear facility operator and at a level of performance of a NRC-regulated entity; Implement and improve OCRWM initiatives including Safety Conscious Work Environment and compliance with all direction on legal licensing issues in a timely manner to the satisfaction of the Office of General Counsel. Also, the contractor's ability to support DOE in licensing issues such as developing timely responses to internal and external comments; the contractor prepares high quality responses and information addressing licensing contentions; the contractor provides expert witnesses and expert assistance during all phases of the licensing process; the contractor provides inputs to the Licensing Support Network in accordance with 10 CFR 2; the contractor continues to develop and evidence a culture of an NRC license applicant; and, the contractor provides responsiveness and level of support sufficient to allow the NRC to complete the licensing process within the statutory 3 year period, without need for extension. Also, the contractor's ability to maintain and improve Program schedule for waste emplacement in 2010, and the contractor's ability to aggressively complete authorized preconstruction activities ensuring the site is optimally positioned to initiate repository construction

following NRC issuance of Construction Authorization. Other attributes for this award fee activity will be measured using, but not limited to, the following: contractor monthly performance indicator results including positive or negative trends, management reviews and reports including the Monthly Operating Review (MOR), contractor self assessment reports, and DOE independent and program assessments.

Special Emphasis Areas: Award fee may be earned for special emphasis areas (SEAs) related to this effort. This fee will be available for such activity throughout the remainder of the contract base period. The SEAs will be developed for each six-month period beginning April 1, 2005. DOE and the contractor will collaboratively prepare them. They may change from period to period to reflect their current importance and degree of concern for performance. These SEAs are defined in the PEMP. The definition will include SEA description, related expectations and evaluation criteria. It is expected that there will be from about four to six SEAs for each evaluation period. The PEMP will reflect the allocation of fee for each SEA. At the conclusion of each six-month evaluation period, DOE may award fee associated with the SEAs for that period.

- (6) Adjustments to earned PBI fee and award fee may occur subject to:
 - (a) The Section I, Contract Clause DEAR 970.5215-3, entitled, "Conditional Payment of Fee" is applicable.
- (7) In the event the Annual Appropriations estimated in B.3 (b) above deviates for any fiscal year more than plus or minus 10% from the base set forth in (b) above, the Contractor agrees to negotiate with DOE, pursuant to the Section I, Contract Clause DEAR 970.5243-1, entitled, "Changes," an equitable adjustment to the contract, which may include the maximum total available fee amount, PBIs, award fee (to include SEAs), allocation of fee to PBIs, to reflect the impact of such deviation. In the event the parties are unable to reach agreement on the maximum available fee amount, the Government reserves the right to unilaterally establish the maximum available fee amount.
- (8) Changes to the fee pool, funding levels, or milestones identified in this clause may be made with the occurrence of any of the following (a) through (c).
 - (a) Assumptions:

The milestone, budgets, and requirements are based upon a set of assumptions which the Office of Civilian Radioactive Waste Management (OCRWM) is currently operating under. Should the

basis for those assumptions change, the milestone, budgets and/or requirements may also change. Assumptions which do not impact level 2 or higher milestones will not change the fee pool or performance based milestones. A discussion of milestone levels is contained in the Civilian Radioactive Waste Management Major System Management Policy.

(b) Funding Levels:

OCRWM has established funding levels and/or Total System Life Cycle Costs necessary to meet the program mission. Annually, budget requests are submitted to Congress to support the program. If Congress does not appropriate sufficient funds to support the program mission, DOE may change the milestone and/or requirements to stay within the appropriated funding. Any time the actual funding varies plus or minus 10 percent of the requested funding level upon which the fee pool is based, as discussed in (7) above, a change to the fee pool amount and related requirements and/or milestone may be processed through the change control system to change the baseline with a possible change to the contract and the PEMP.

(c) Beyond the Control/Influence:

There are certain instances when changes to program mission, milestones and/or requirements may be beyond the control / influence of either the DOE or the Contractor. Some examples may include: litigation and legislation, expanding the repository to include more fuel than currently defined in legislation, acceptance of fuel earlier than anticipated, changing the radiation standards, etc. Additionally, decision-makers (to include DOE, the Executive Branch, the Congress, regulatory agencies) may or may not make timely reviews, approvals or decisions based on circumstances outside the control/influence of the contractor.

Examples of instances within the contractor's control or influence are quality and completeness of the documents submitted and quality, completeness and timeliness of the contractor's response to questions/concerns/issues with documents submitted.

B.4 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in Section I, Contract Clause DEAR 952.250-70, entitled, "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.